# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## COMPANY PETITION No. 41 of 2004

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE R.S.GARG**

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**MRC AUTOSOLUTIONS PVT. LTD. - Petitioner(s)**

**Versus**

**. - Respondent(s)**

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**Appearance :**
MR MIHIR JOSHI, SR.ADVOCATE FOR SINGHI & CO for Petitioner-present
MR URVISH MALKAN for Respondent No. 1-present

MR KUWADIA, OFFICIAL LIQUIDATOR-present
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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**
**Date : 18/01/2006**

**ORAL JUDGMENT**

1. Mr. Mihir Joshi, learned Senior Advocate with Mr. Sandip Singhi for the petitioner. Mr. K.I. Kazi, under the authority of Mr. Urvish Malkan for Regional Director and Mr.Kuwadia, the Official Liquidator.

2. Present is an application filed for sanctioning arrangement embodied in the Scheme of Amalgamation of MRC Autosolutions Pvt. Ltd. [“MAPL” for short], with Cummins Auto Services Limited [“CASL” for short], whereby undertaking of the MAPL as defined in the Scheme of the transferor company shall stand transferred and vest in the transferee company on the

terms and conditions as stated in the Scheme of Amalgamation. Regional Director, so also the Official Liquidator have raised objections that the appointed date must be changed from 1st April, 2003 to 10th June, 2003, a date on which the transferee company became 100% shareholder of the transferor company. It is submitted by them that the appointed date and the effective date are different and as the interest of the shareholders is to be taken care of and the exchange ratio is also to be re-settled, transferor, so also the transferee company be asked to change the appointed date.

3. When Mr. K.I.Kazi, under the authority or Mr. Purvish Malkan appeared in the matter, I inquired from him as to what are the objections and what are the grievances proposed to be raised in support of the objections, Mr. Kazi, with blunt face and blatant defiance, informed the Court that he only knows one thing and that is that the Regional Director has filed his objections. He informed the Court that he does not know anything in the matter. I am really shocked and surprised to see the conduct of Mr. Kazi and with bleeding heart, I am recording his conduct in these proceedings. When a party engages a counsel, it reposes

its absolute confidence in the said lawyer and believes that the counsel would represent it properly in the Court and in case the counsel proposes to part the brief to someone else, then, it is expected of that counsel that he would part proper instructions to his junior colleague or anyone else, who has to appear in the matter. Appearance of an advocate in the Court is not to be a stone-faced appearance, but it is for assisting the Court. In the present matter, the conduct of Mr. Kazi in giving such replies cannot be approved and conduct of Mr. Purvish Malkan in giving brief to Mr. Kazi without further instructions also cannot be approved. I propose to send a copy of this order to the Regional Director for proper information and proper action in the matter.

4. Mr. Mihir Joshi, learned Senior Advocate, taking an exception to the objections raised by the Official Liquidator Mr. Kuwadia and Mr. Purvish Malkan, who has come to the Court after the call was sent by the Court, submits that identical objection was raised in Bombay High Court in Company Petition No. 195 of 2004, wherein, the present transferor company – MAPL who was the petitioner was seeking approval of the Scheme of Amalgamation of MRC Autosolutions Private Limited. He

submits that by order dated 3rd December, 2004, the Court rejected the said objection and observed that after the transferee company has become 100% owner of the transferor company, it would be absurd to hold that the transferee company is required to allot shares to its ownself after owning the transferor company to its full strength. In the said order, the Court has also observed that the appointed date is not required to be changed from 1st April, 2003 to 10th June, 2003, because, no exchange ratio of shares is required to be changed, once it was shown that the said petitioner before the Bombay High Court owned 100% share capital of the transferor company.

5. After hearing the parties, I am of the opinion that the objections raised by the Regional Director, so also the Official Liquidator deserve to be rejected, those are accordingly rejected. The petition is allowed in terms of the prayer clause “a” to “e” of the petition. Ordinarily, the petitioner should have been asked to pay costs to the Regional Director and the official Liquidator, I will not allow any cost in favour of the Regional Director, but I will only allow cost of Rs. 2500/- in favour of the Official Liquidator.

**[R.S. GARG, J.]**

**pirzada/-**